No._____

In the Supreme Court of the United States

OCTOBER TERM, 1960

YELLOWSTONE PIPE LINE COMPANY,

Petitioner,

vs.

THE STATE BOARD OF EQUALIZATION OF THE STATE OF MONTANA: DAN FULTON, E. J. BYRNE and JOHN C. ALLEY, members of and constituting The State Board of Equalization of the State of Montana; YELLOWSTONE COUNTY, MONTANA, a political subdivision of the State of Montana; MARJORY C. THOMPSON as Treasurer of the said Yellowstone County, Montana; and T. A. COTHRON as Assessor of said Yellowstone County, Montana,

Respondents,

OIL BASIN PIPE LINE COMPANY,

Petitioner,

vs.

THE STATE BOARD OF EQUALIZATION OF THE STATE OF MONTANA: DAN FULTON, E. J. BYRNE and JOHN C. ALLEY, members of and constituting The State Board of Equalization of the State of Montana; YELLOWSTONE COUNTY, MONTANA, a political subdivision of the State of Montana; MARJORY C. THOMPSON as Treasurer of the said Yellowstone County, Montana; and T. A. COTHRON as Assessor of said Yellowstone County, Montana,

Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

Brief for Respondent in Opposition

ARGUMENT

I.

The decision of the Montana Supreme Court is in complete accord with applicable decisions of this court.

In support of their contention that the decision of the Montana Supreme Court in these cases is not in accord with prior decisions of this court, petitioners present two constitutionally irrelevant arguments.

Petitioners first argue (Petition, pp. 9-10) that only the Montana legislature can classify property for the purposes of taxation and that since Montana's classification statutes do not recognize pipelines as a separate class, Montana's Board of Equalization cannot do so. The Montana Supreme Court has construed the Montana constitution and statutes as allowing the Board to recognize pipe lines as a separate class. *Yellowstone Pipe Line Co. v. State Board of Equalization,* ____ Mont.____, 358 P. 2d 55, Appendix to Petition, p. 22. Since it is not denied that products pipe lines constitute a class of property which may be treated differently from other classes of property for purposes of taxation, and recognition of this difference has been approved by the Montana Supreme Court, no violation of the Fourteenth Amendment is established. *Nashville, Chattanooga & St. Louis Ry. v. Browning,* 310 U.S. 362, 368-69.

Petitioners next contend, at pp. 11-12 of their Petition, that the systematic undervaluation of real properties

in the state discriminates against them in that it causes them to bear a disproportionately large share of the tax burden of the state. However, under Section 84-301, Revised Codes of Montana, 1947, real property is classified under Class Four, a different classification than that assigned to the property of the Petitioners. It is well settled that if a tax applies to a class which may be separately taxed, those within the class may not complain because others, not of the class, are taxed improperly, *Morf. v. Bingaman,* 298 U.S. 407, 413; *Michigan Central R.R. v. Powers,* 201 U.S. 245, 301; *Carmichael v. Southern Coal & Coke Co.,* 301 U.S. 495, 509. Thus the fact that property of a different class is assessed differently than that of petitioners can afford no basis for relief.

Petitioner's basic contention is that the Montana Supreme Court misinterpreted the holding of this Court in *Nashville, Chattanooga & St. Louis Railway v. Browning, supra,* which case is attempted to be distinguished on the ground that the action there complained of was a settled state practice, while such is not true in the instant case. The facts of the case at bar, rather than distinguishing it from *Browning,* bring it clearly within the holding of that case. In *Browning,* this court sought to determine whether Tennessee had made a separate classification of railroad property for tax purposes. This court found that Tennessee "law" did separately classify state property, this "law" being the settled practice of the Tennessee Railroad and Public Utilities Commission. This settled practice was

consulted only because there was no more conventional source of Tennessee law available to justify the classification made, the court stating, at 310 U.S. 369:

> "If the state supreme court had construed the . . . Tennessee Constitution so as to permit recognition of these diversities, (separate classification of railroad properties) no appeal could successfully be made to the Fourteenth Amendment."

Here, the Montana Supreme Court has construed the Montana Constitution as allowing the State Board of Equalization to tax products pipe lines as a separate class. Thus no constitutional violation is shown.

II.

The decision of the Montana Supreme Court does not sanction assessment of property on an individual basis.

At page 15 of their Petition, petitioners attempt to persuade this Court, that if allowed to stand, the decision in this case will engender wholesale constitutional violations in the application of Montana's taxing laws. There is nothing, either in this decision or in prior decisions of the Montana Supreme Court, to give credence to such a fear. That all property similarly situated must be similarly taxed remains the law in Montana. *Hilger v. Moore,* 56 Mont. 146, 170, 182 Pac. 477, 481-82; *State v. North American Car Corporation,* 118 Mont. 183, 193; 164 P. 2d 161, 166. The State Board of Equalization is continuing its efforts, in accord with the dictates of law and reason, to improve assessment practices in Montana (R. 263).

CONCLUSION

The questions sought to be reviewed are not novel. The principles governing their disposition have long been settled by the decisions of this Court. These principles were correctly applied in this case. Review by this Court would neither clarify the law nor correct an injustice. For these and the reasons detailed above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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